

FACT SHEET

SUBJECT: Pretrial Restraint

1. **PURPOSE:** To provide facts regarding pretrial restraint.

2. **FACTS:**

a. Any commissioned officer may impose pretrial restraint on an enlisted soldier when there is a reasonable belief that an offense triable by court-martial has been committed; the soldier committed it; and the restraint ordered is required by the circumstances. Only a commander may impose pretrial restraint on an officer.

b. Pretrial restraint falls into the following four categories:

(1) **Conditions on liberty.** Orders to do or refrain from doing specified acts -- e.g. orders: to report periodically, not to go to a certain place, not to associate with specified persons, to abstain from alcohol, or requiring an escort. Must permit pretrial preparation -- cannot prevent access to defense counsel.

(2) **Restriction in lieu of arrest.** Orders to remain within specified limits, normally while performing full military duties. Less severe than arrest. Examples include pulling pass privileges or restriction to the company area, place of worship, and place of mess.

(3) **Arrest.** Orders to remain within specified limits normally narrower than those of restriction in lieu of arrest. May not be required to perform full military duties.

(4) **Pretrial Confinement.** Physical restraint by order of competent authority. Requires a reasonable belief that an offense triable by court-martial has been committed; that the soldier committed it; and that confinement is "required by the circumstances." Pretrial confinement may be required where the soldier is a flight risk or it is foreseeable that the soldier will engage in serious criminal misconduct **and** less severe forms of restraint are inadequate.

(a) Serious criminal misconduct includes witness intimidation, obstruction of justice, seriously injuring others, or other offenses which pose a threat to the safety of the community, or to the effectiveness, morale, discipline, readiness, or safety of the command, or to the national security of the United States.

(b) Pretrial confinement is not normally appropriate for summary court martial and not available for Article 15.

3. **QUESTIONS?** Each case is unique and fact specific. Call your trial counsel at 624-3544. During non-duty hours, the on-call JAG officer pager is 943-6502.